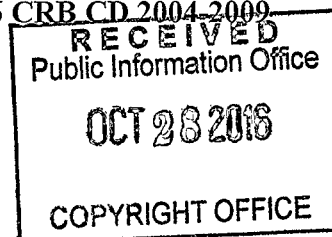


Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)

)
Distribution of the 2004, 2005, 2006, 2007,)
2008 and 2009 Cable Royalty Funds)

Docket No. 2012-6 CRB CD 2004-2009
(Phase II)



In the Matter of)

)
Distribution of the 1999-2009 Satellite)
Royalty Funds)

Docket No. 2012-7 CRB SD 1999-2009
(Phase II)

OCT 28 2016

**SETTLING DEVOTIONAL CLAIMANTS' REPLY IN SUPPORT OF THEIR
MOTION TO COMPEL**

IPG's Opposition to SDC's Motion to Compel IPG to Produce Documents ("IPG Opposition") fails to demonstrate that the documents the SDC seek should be withheld as work product. IPG does not argue that any of the documents requested are entitled to greater protection as "opinion" work product that reveals "the mental impressions, conclusions, opinions, or legal theories of a party's attorney." Thus, the Motion to Compel must be granted if the SDC have a "substantial need" and "cannot, without undue hardship, obtain their substantial equivalent by other means." Fed. R. Civ. P. 26(b)(3)(A).

A. There is a "substantial need" to understand how IPG's results have changed.

First, IPG argues there is no "substantial need" because the documents are sought as a substitute for deleted interim calculations that "are not relied upon by Dr. Cowan ... the final calculations are what is relied upon." IPG Opposition at 5. This is not an accurate characterization. The calculations Dr. Cowan failed to preserve were used to generate the actual

UNDERSIZED DOCUMENTS

AB did...

☒ Docketed (all cases)

☒ Store on shared drive

☒ Distributed to all

☐ Emailed

☐ Outlook Updated

☐ Service List Updated

satellite results that appear in IPG's Amended Direct Statement of August 31, 2016. *See* Aug. 31, 2016 Amended Expert Report of Dr. Charles D. Cowan, Ph.D. at 10, Tables 2, 4. They were relied upon and were formally adopted as IPG's position in this litigation for more than a month.

The SDC first requested those calculations on the very next day, September 1, 2016. Exhibit A, Sept. 1, 2016 SDC Discovery Requests to IPG at Request No. 16. After IPG failed to produce those calculations, the SDC made three additional requests before making the follow-up requests that are the subject of this Motion to Compel. Exhibit B, Sept. 20, 2016 Email from M. MacLean to B. Boydston ("it appears that Dr. Cowan's satellite results produced in discovery do not match his results reported in either his initial or his amended written direct statement. Please explain, and produce the data and code files used to generate the results that he *actually testified to*."); Exhibit C at 3, Sept. 26, 2016 Email from M. MacLean to B. Boydston ("Please produce the documents underlying the 'earlier analysis of an incomplete data file' that purportedly led to the results in the amended direct statement."); Exhibit C at 2, Sept. 27 Email from M. MacLean to B. Boydston ("I want the backup calculations for the satellite results in Dr. Cowan's amended direct statement ... I want to know what he changed, and why."). Contrary to IPG's characterization that counsel "immediately inquired from Dr. Cowan as to the existence of the information sought," it was only after the fourth request and four weeks had passed before IPG admitted that Dr. Cowan "overwrote" the documents being requested. Exhibit C at 1, Sept. 27 Email from B. Boydston to M. MacLean. IPG's lack of candor toward opposing counsel is further justification for the admittedly extraordinary request for communications with a party's expert witness.

IPG's Amended Direct Statement of August 31, 2016, has been stricken, but the SDC are entitled to information necessary to understand the reasons for the changes between IPG's

original direct statement and its first Amended Direct Statement, and how those results were subsequently changed to become the second Amended Direct Statement which is now the subject of a pending Motion to Amend filed by IPG.

The SDC's "substantial need" extends to any documents that are necessary for the SDC to evaluate the changes IPG has made in its filings and how those calculations evolved. The issue is graphically illustrated by the dramatic shift in the claims IPG is making for Devotional satellite shares. IPG's shifting satellite claims increase not only between its initial filings in August, but even more in its filing in October. The following chart shows the dramatic shift occasioned by Dr. Cowan's recalculations.

Year	IPG Satellite #1 Written Direct Statement 8/22/16, Table 2	IPG Satellite #2 First Amended Written Direct Statement 8/31/16, Table 2	IPG Satellite #3 Second Amended Written Direct Statement 10/17/16, Table 2
1999	0.08%	0.59%	1.11%
2000	0.00%	0.00%	0.00%
2001	0.64%	4.88%	8.78%
2002	0.84%	6.33%	11.23%
2003	0.77%	5.83%	10.39%
2004	0.78%	6.01%	10.73%
2005	1.54%	11.89%	20.16%
2006	3.68%	23.76%	36.60%
2007	2.56%	17.20%	27.52%
2008	0.00%	0.00%	0.00%
2009	2.45%	16.38%	26.25%

The SDC and the Judges are entitled to know how Dr. Cowan's calculations, which were the subject of the SDC's Notice of Consent filed August 26, 2016, evolved from the initial filing in August to the claims in First Amended Written Direct Statement, and then to the Second Amended Written Direct Statement. But because Dr. Cowan's failed to retain such crucial evidence, the SDC lack sufficient facts to test each and every one of these materially changed calculations. IPG seeks to avoid discovery by arguing that it *no longer* intends to rely on the

results in its first Amended Direct Statement, but it cannot avoid discovery by retreating from a position after the SDC legitimately sought discovery about that position.

B. Dr. Cowan's and IPG's vague, conclusory, and repetitive assertions are not a "substantial equivalent" of the data underlying the calculations.

IPG also argues that the SDC already have, in the form of IPG's motions, emails, and Dr. Cowan's statements, information that "makes it perfectly clear what Dr. Cowan did and why." IPG Opposition at 2. But, as described above, the record of what happened with Dr. Cowan's second set of calculations has been obfuscated by vague and confusing statements from the start. The referenced declarations are far from a "substantial equivalent."

IPG cites *Guilford Nat. Bank of Greensboro v. S. Ry. Co.*, 297 F.2d 921 (4th Cir. 1962) for the proposition that discovery of written communications with prospective witnesses can be denied in the absence of "special circumstances" warranting their production. This is clearly true, but the denial of discovery in *Guilford Nat. Bank of Greensboro* was specifically on the basis that counsel for the party seeking production of witness statements had a generally contemporaneous opportunity to question the witnesses himself. 297 F.2d at 927 ("This is not a case where the witnesses who gave the adversary their written statements are presently unavailable ..., or are shown to be hostile"). In this case, on the other hand, Dr. Cowan is an opposing party's expert who is not available to be interviewed by the SDC's counsel under the Judges' rules. There is "a distinct and irremediable disadvantage" to the SDC because the substance of Dr. Cowan's calculations supporting the satellite results in IPG's first Amended Direct Statement and the details explaining earlier and subsequent changes in those calculations cannot be discovered through any other means. *Id.*

C. The documents requested are not attorney-client privileged.

IPG also argues that “communications between IPG’s counsel and Dr. Cowan are obviously also protected by the attorney-client privilege. The SDC’s requests are not narrowly tailored to address communications regarding Dr. Cowan’s reports and calculations.” IPG Opposition at 6. This is simply not true.

First, the SDC follow-up requests specifically sought communications and documents related to the three sets of results from Dr. Cowan, rather than all communications among the various individuals. Second, the requests do not seek communication between IPG and its counsel, but rather between counsel and certain consultants and between those consultants and IPG. Typically, “communications that do not involve both attorney and client, are unprotected.” *In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982). Communications with third party consultants are generally subject to work product protection, not attorney-client privilege.

D. There is not sufficient proof that communications with Raul Galaz are protected as work product.

In the circumstances of this case, the SDC should not be required to accept Ms. Vernon’s self-serving declaration that Mr. Galaz “continued to perform consulting services for IPG as a consultant, and in that role Mr. Galaz has had the full authority to act on behalf of IPG in the prosecution of the above titled proceeding.” Vernon Dec. ¶ 3. For the purpose of establishing that Mr. Galaz’s communications on behalf of IPG constitute work product, IPG should at a minimum be required to set forth the facts – not just a conclusory statement – showing that Mr. Galaz is in fact an agent of IPG authorized to act on its behalf for purposes of litigation. The court in *Yeda Research* required the litigants to produce documents showing how the consultant had been working at the direction of counsel when a written consulting agreement was

unavailable. *Yeda Research & Dev. Co. v. Abbott GmbH & Co. KG*, 292 F.R.D. 97, 111 (D. D.C. 2013).

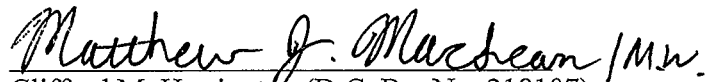
In short, IPG can't have it both ways. It must either accept the consequences of dissociating with Mr. Galaz, or allow the parties and the Judges to see what his role truly is.

Conclusion

For the foregoing reasons, the SDC's Motion to Compel should be granted.

October 28, 2016

Respectfully submitted,

Matthew J. MacLean / M.L.

Clifford M. Harrington (D.C. Bar No. 218107)

clifford.harrington@pillsburylaw.com

Matthew J. MacLean (D.C. Bar No. 479257)

matthew.maclea@pillsburylaw.com

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PILLSBURY WINTHROP SHAW PITTMAN LLP

Post Office Box 57197

Washington, DC 20036-9997

Telephone: 202-663-8525

Facsimile: 202-663-8007

Counsel for Settling Devotional Claimants

CERTIFICATE OF SERVICE

I, Matthew J. MacLean, hereby certify that a copy of the foregoing was sent electronically and by overnight mail on October 28, 2016, to the following:

INDEPENDENT PRODUCERS GROUP

Brian D. Boydston
Pick & Boydston, LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

PROGRAM SUPPLIERS

Gregory O. Olaniran
Lucy Holmes Plovnick
Mitchell Silberberg & Knupp LLP
1818 N Street, NW
8th Floor
Washington, DC 20036

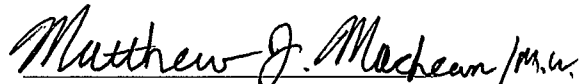

Matthew J. MacLean

Exhibit A



Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

Matthew J. MacLean
tel 202.663.8183
matthew.maclea@pillsburylaw.com

September 1, 2016

Brian D. Boydston
Pick & Boydston, LLP
10786 Le Conte Ave.
Los Angeles, California 90024

Re: *Docket No. 2012-6 CRB CD 2004-2009 (Phase II) and*
Docket No. 2012-6 CRB SD 1999-2009 (Phase II)
Settling Devotional Claimants' Document Production Requests in
connection with Independent Producers Group's Written Direct
Statement in Reopened Proceedings

Dear Mr. Boydston:

The Settling Devotional Claimants hereby submit the following discovery requests in the above-referenced Docket (hereinafter the "Proceeding").

Instructions

Please repeat each of the requests below on your response. Please provide a separate written response to each request. If you object to any request, state each basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to the portions of the request that are not objectionable. If you claim a document is "privileged," please state every fact supporting your claim of privilege. Selection of documents from files and other sources, as well as the numbering or identification of such documents for purposes of this production, shall be performed in such a manner as to ensure that the source of each document may be determined, if necessary. In particular, in the event that documents are used in sequence with other documents to produce a result, the documents should be produced in such order, or the order of sequence used stated so as to permit replication of the results. Further, if any documents that you produce are contained in file folders with tabs or labels identifying such documents, you are requested to produce such folders, tabs and/or labels intact with such documents. Documents otherwise attached to each other should not be separated for purposes of this production. Any electronic record or computerized piece of information should be produced in an intelligible format or should

include a description of the system and/or program from which each was derived sufficient to permit rendering the material intelligible.

Definitions

The following shall apply to all requests:

- a. the singular of each word shall be construed to include its plural and vice versa;
- b. "and" as well as "or" shall be construed both conjunctively as well as disjunctively;
- c. "each" shall be construed to include "every" and vice versa;
- d. "any" shall be construed to include "all" and vice versa;
- e. "including" shall be construed as "including without limitation"; and
- f. the present tense shall be construed to include the past tense and vice versa.

The term "underlying" has the same meaning as in 37 C.F.R. § 351.6, and includes, without limitation, all documents upon which the witness relied in making his or her statement and all documents that verify bottom-line numbers.

"Regarding," "relating to," "addressing," or "showing" when used herein means, in whole or in part, constituting, relating to, embodying, containing, evidencing, reflecting, reciting, identifying, stating, recording, supporting, refuting, referring to, or in any way being relevant, directly or indirectly to the subject.

"Supporting" or "support" means, in whole or in part, relating to the basis for a statement or assertion, and includes documents that might tend to refute the statement or assertion.

"Mr. Galaz" means Raul C. Galaz.

"Dr. Cowan" means Charles D. Cowan, Ph.D.

The term "document" means and includes all materials comprehended within the description of the term "document" contained in Rule 34 of the Federal Rules of Civil Procedure and means the original and all drafts of a writing, as that term is defined by Rule 1001 of the Federal Rules of Evidence, including, without limitation, all written, recorded, graphic or photographic matter, however produced or reproduced, of every kind and description in your actual or constructive possession, custody, care or control pertaining in any manner to the subject matter indicated and includes, without limiting the generality of the foregoing, originals (or copies where originals are not available) and drafts, all papers, letters, notes, memoranda, correspondence, telegrams, cables, photographs, microfilm, prints, recordings, transcriptions, blueprints, drawings, paper,

books, accounts, objects, notes or sound recordings of any type of personal or telephone conversations or meetings or conferences, minutes of directors or committee meetings, other minutes, interoffice communications or correspondence, reports, studies, written forecasts, projects, analyses, contracts, licenses, invoices, charge slips, expense account reports, hotel charges, receipts, agreements, ledgers, journals, books of account, vouchers, bank checks, freight bills, working papers, drafts, statistical records, cost sheets, abstracts of bids, stenographers' notebooks, calendars, appointment books, telephone slips, diaries, time sheets or logs, job or transaction files, computer printouts or papers similar to any of the foregoing however denominated. A draft or non-identical copy is a separate document within the meaning of this term. The term "document" also refers to electronic records in the form of electronic mail, computer files and the like without regard to whether the electronic record exists in printed form.

DOCUMENT REQUESTS

1. All documents which underlie, relate to, support or form the basis for the statement in the Expert Report of Charles D. Cowan, Ph. D. ("Cowan Report") and the Amended Expert Report of Charles D. Cowan, Ph. D. ("Amended Cowan Report") that, "I have been retained by Pick & Boydston to develop a methodology for estimating values for programs/sets of program for different third party television show providers for use by the Copyright Royalty Board in its determination of allocation of royalties."
2. All documents which underlie, relate to, support or form the basis for the statement of Dr. Cowan in the Cowan Report and the Amended Cowan Report that, "I was also asked to review past methodologies employed and data provided to determine their utility."
3. All documents, reports, analyses or other material which reflect, relate to, or form the basis for any conclusions reached by Dr. Cowan as to the utility or accuracy of past methodologies employed by IPG in proceedings before the Copyright Royalty Board.
4. All documents, data, and source material that Dr. Cowan considered that underlie, relate to, support or form the basis of, or in the alternative undermine or dispute all facts, conclusions, and/or opinions contained in the Cowan Report and the Amended Cowan Report.
5. All data provided to Dr. Cowan, as referenced in paragraph 2 of the Cowan Report and the Amended Cowan Report.
6. All documents showing the source of the data that Dr. Cowan was provided (Cowan Report and Amended Cowan Report, at ¶ 2), including who selected, compiled, and provided him with the data.
7. All documents underlying the statement: "I developed a methodology that is directly responsive to what is my understanding of the valuation required for these

analyses, similar to methods I have used in the past.” (Cowan Report and Amended Cowan Report, ¶ 3.)

8. All documents, rulings, past submissions by “Plaintiffs and Defendants” and econometric literature on the topic of allocations of royalties which Dr. Cowan states he has read prior to preparation of the Cowan Report (Cowan Report and Amended Cowan Report, ¶ 6).

9. All documents underlying Dr. Cowan’s statement that the method he adopted is a “commonly used method.” (Cowan Report and Amended Cowan Report, ¶ 10.)

10. All documents underlying the “set of estimates that relies on a calculation that the Judges have accepted in past hearings,” referenced in paragraph 10 of the Cowan Report and Amended Cowan Report.

11. All documents underlying the statement “There is a mechanism that the CSO has to be following to determine the value of the station. The mechanism is unknown, which is why we need to estimate what the values are for programs in the bundle.” (Cowan Report and Amended Cowan Report, ¶ 13.)

12. All documents underlying the statement, “[W]hile there is likely some variation in value to CSO to CSO about the value of different titles, the value cannot vary in an extreme manner, since that would create an extreme demand for some stations that are offering the popular titles, and thus the title would be omnipresent.” (Cowan Report and Amended Cowan Report, ¶ 14.)

13. All documents underlying the statements, “The CSO is indifferent to viewership of a particular program ...,” and “[V]iewership cannot be important to the decisions of the CSO” (Cowan Report and Amended Cowan Report, ¶ 16.)

14. All documents underlying the statement, “If viewership of a particular program were important to the CSO, the CSO would put terms in the licensing agreement to allow it to have a say in whether the time or the offering of a station were to be changed.” (Cowan Report and Amended Cowan Report, ¶ 16.)

15. All computations and all documents that underlie the results set forth in each table contained in the Cowan Report, including but not limited to “the voluminous data provided to me” (Cowan Report ¶ 30) and the modified alternative estimates Dr. Cowan was asked to consider.

16. All computations and all documents that underlie the results set forth in each table contained in the Amended Cowan Report, including but not limited to “the voluminous data provided to me” (Amended Cowan Report ¶ 30) and the modified alternative estimates Dr. Cowan was asked to consider.

September 1, 2016

Page 5

17. All documents related to any computation of confidence intervals conducted in connection with any witness's methodology in this case.
18. All reference materials Dr. Cowan relied upon, including the pages cited on page 21 of the Cowan Report and the Amended Cowan Report.
19. All documents relating to any changes between the Cowan Report and the Amended Cowan Report, and the reasons for those changes, including all communications with Dr. Cowan and notes of communications with Dr. Cowan in which any changes or reasons for changes were discussed.

Sincerely,

/s/

Matthew J. MacLean

Counsel for Settling Devotional Claimants

Exhibit B

From: [MacLean, Matthew J.](#)
To: [Brian D. Boydston, Esq.](#); [Harrington, Clifford M.](#); [Draper, Victoria L.](#); [goo@msk.com](#); [lhp@msk.com](#); [Warley, Michael A.](#)
Subject: RE: IPG Discovery Responses
Date: Tuesday, September 20, 2016 5:59:05 PM
Attachments: [image001.png](#)
[image002.png](#)

Brian,

In addition to the matters raised below, it appears that Dr. Cowan's satellite results produced in discovery do not match his results reported in either his initial or his amended written direct statement. Please explain, and produce the data and code files used to generate the results that he *actually testified to*. More "errors"?

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t [202.663.8183](tel:202.663.8183) | f [202.663.8007](tel:202.663.8007)
matthew.maclea@pillsburylaw.com | [website bio](#)

ABU DHABI AUSTIN BEIJING HONG KONG HOUSTON LONDON LOS ANGELES
NASHVILLE NEW YORK NORTHERN VIRGINIA PALM BEACH SACRAMENTO
SAN DIEGO SAN DIEGO NORTH COUNTY SAN FRANCISCO SHANGHAI
SILICON VALLEY TOKYO WASHINGTON, DC



From: MacLean, Matthew J.
Sent: Tuesday, September 20, 2016 11:39 AM
To: 'Brian D. Boydston, Esq.'; Harrington, Clifford M.; Draper, Victoria L.; [goo@msk.com](#); [lhp@msk.com](#); Warley, Michael A.
Subject: RE: IPG Discovery Responses

Brian,

I am writing to demand that IPG immediately produce its data and code files used to generate Dr. Cowan's results in his initial written direct statement in the 1999-2009 satellite and 2004-2009 cable cases. The production you have provided appears only to contain code files for the amended written direct statement.

Multiple discovery requests sought production of data and code files for the initial results, and IPG asserted no objection to these requests (other than improper and non-specific general objections that are tantamount to making no objection at all). See, e.g., SDC Document Requests 1, 4, 5, 7, 15, 19.

As you know, our reply in support of our motion to strike IPG's amended direct statement is due on Thursday. The reason for the changes between IPG's initial and amended direct statements, and whether they were truly the result of an "error" or a change in methodology from a linear

regression to a log-linear regression, is a central issue – both in this motion and more generally in connection with IPG and Dr. Cowan's credibility. IPG and Dr. Cowan have yet to identify a single "error," or to produce any document identifying or allowing us to identify any "error" resulting in the very substantial differences between the results in the original and amended written direct statement. It certainly appears that IPG's failure to produce the documents required was designed to interfere with our ability to identify the differences ourselves in advance of replying to your opposition.

Relatedly, no files have been produced supporting Dr. Cowan's statement in his amended direct statement, "A similar result is found when the natural logarithm of Y is used as the dependent variable, except that changes are now expressed as proportional changes." This statement would appear to indicate that Dr. Cowan performed two regressions – one linear and one log-linear – and compared the results. But the *only* computation in the documents produced uses a log-linear regression, consistent with the formula in the amended direct statement. None contains a linear regression consistent with the initial direct statement. Either Dr. Cowan never actually performed the comparison described, or IPG has withheld documents.

Please provide the necessary files today. I am available to meet and confer today if you would like.

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t [202.663.8183](tel:202.663.8183) | f [202.663.8007](tel:202.663.8007)
matthew.maclean@pillsburylaw.com | [website bio](#)

ABU DHABI AUSTIN BEIJING HONG KONG HOUSTON LONDON LOS ANGELES
NASHVILLE NEW YORK NORTHERN VIRGINIA PALM BEACH SACRAMENTO
SAN DIEGO SAN DIEGO NORTH COUNTY SAN FRANCISCO SHANGHAI
SILICON VALLEY TOKYO WASHINGTON, DC



From: Brian D. Boydston, Esq. [<mailto:brianb@ix.netcom.com>]
Sent: Monday, September 12, 2016 4:51 PM
To: Harrington, Clifford M.; MacLean, Matthew J.; Draper, Victoria L.; goo@msk.com; lh@msk.com
Cc: worldwidesg@aol.com
Subject: IPG Discovery Responses

Counsel,

Attached hereto are IPG's responses to discovery requests of the SDC and MPAA.

Brian Boydston

Exhibit C

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
To: MacLean, Matthew J. <matthew.maclea@pillsburylaw.com>
Cc: goo <goo@msk.com>; lhp <lhp@msk.com>; Harrington, Clifford M. <clifford.harrington@pillsburylaw.com>; Draper, Victoria L. <victoria.lynch@pillsburylaw.com>
Subject: Re: 1999-2009 Royalty Distributions
Date: Tue, Sep 27, 2016 7:46 pm

There is nothing suspicious going on here, just mistakes.

Brian

-----Original Message-----

From: "MacLean, Matthew J."
Sent: Sep 27, 2016 4:42 PM
To: "Brian D. Boydston, Esq."
Cc: "goo@msk.com" , "lhp@msk.com" , "Harrington, Clifford M." , "Draper, Victoria L."
Subject: Re: 1999-2009 Royalty Distributions

Brian,

I am glad you finally understand my request.

The SDC will oppose your filing of yet another revision to Dr. Cowan's results, principally because I am far from persuaded that the very material changes were actually the result of an error. Your failure to preserve the data and calculations underlying the amended direct statement, along with the fact that it took you this long to admit that they were not preserved, only adds to suspicions.

Matt

Sent from my iPhone

On Sep 27, 2016, at 6:48 PM, Brian D. Boydston, Esq. <brianb@ix.netcom.com> wrote:

Matt,

The backup that is current for the second amended report is what we sent right after the August 30th report. We don't have a file that tells how Mr. Cowan got to the satellite calculations that were in the Aug. 30th report – they were based on an intermediate result that Mr. Cowan overwrote.

That didn't exist by the time we supplied the backup materials, and Mr. Cowan didn't even know he had copied anything off of them.

We have produced everything Mr. Cowan relied on the for the August 22nd report and everything he relied on for the August 30th report. We do not have any materials encompassing the steps between the two reports, since they weren't anything Mr. Cowan was ever going to rely on.

Accordingly, we have no further materials to provide to you.

Also, you referenced Mr. Cowan's "unsworn" affidavit. That was an oversight. We will file one which is "sworn".

Brian

-----Original Message-----

From: "MacLean, Matthew J."

Sent: Sep 27, 2016 2:29 PM

To: "Brian D. Boydston, Esq."

Cc: "goo@msk.com" , "lhp@msk.com" , "Harrington, Clifford M." , "Draper, Victoria L."

Subject: Re: 1999-2009 Royalty Distributions

Brian,

I want the backup calculations for the satellite results in Dr. Cowan's amended direct statement, not just the backup calculations for the result in this unsworn "affidavit" that is supposedly a correction to the amended direct statement. I want to know what he changed, and why. The brouhaha over his first methodological change clearly shows that I cannot take him at his word when he says he is merely making a correction.

This is my fourth and final time requesting this information. And frankly, I do not believe you that you do not understand my request, just like I do not believe that Dr. Cowan and IPG don't know the difference between a natural scale and a logarithmic scale. I hate to be so blunt about it, but this time you have gone too far feigning ignorance.

Matt

Sent from my iPhone

On Sep 27, 2016, at 5:12 PM, Brian D. Boydston, Esq. <brianb@ix.netcom.com> wrote:

Matt, the affidavit is something we will file with a corrected written statement.

As for documents underlying Mr. Cowan's calculations, I don't understand what you are looking for as we produced it prior to producing the backup for the second version.

Brian

-----Original Message-----

From: "MacLean, Matthew J."

Sent: Sep 26, 2016 12:54 PM
To: "Brian D. Boydston, Esq." , "goo@msk.com" , "lh@msk.com" ,
"Harrington, Clifford M." , "Draper, Victoria L."
Subject: RE: 1999-2009 Royalty Distributions

Brian,

Is the "affidavit" attached to your email below something that you intend to file with the Judges as part of yet another iteration of a written direct statement, or is it just something you are providing to us in discovery?

Regardless of your answer to this question, it does not excuse IPG from producing the documents underlying the results reported in the amended direct statement. Please produce the documents underlying the "earlier analysis of an incomplete data file" that purportedly led to the results in the amended direct statement.

Why do I have to keep asking for this? Are you really going to force us to go to the Judges over something you know you are required to produce?

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
1200 Seventeenth Street NW | Washington, DC 20036-3006
t [202.663.8183](tel:202.663.8183) | f [202.663.8007](tel:202.663.8007)
matthew.maclea@pillsburylaw.com | [website bio](#)
Washington

Pillsbury Law

From: Brian D. Boydston, Esq. [<mailto:brianb@ix.netcom.com>]
Sent: Sunday, September 25, 2016 12:07 PM
To: goo@msk.com; lh@msk.com; Harrington, Clifford M.; MacLean, Matthew J.; Draper, Victoria L.
Cc: worldwidesg@aol.com
Subject: 1999-2009 Royalty Distributions

Counsel,

We have been informed by Analytic Focus that the aggregate of the files that were utilized by Dr. Charles Cowan in the creation of his report of August 22, 2016, can be accessed through the attached link:

<https://analyticfocusllc.sharefile.com/d-sb8651cf99404069a>

As you will see, it is highly redundant of files that were already produced.

Additionally, it appears as though statements made by Mr. MacLean earlier this week were accurate, and that two of the tables appearing in Dr. Cowan's August 30, 2016 report incorrectly reported the results of his calculations. To that matter, attached please find an affidavit executed by Dr. Cowan.

Brian Boydston

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